

No. 16139 ✓

**United States
Court of Appeals
for the Ninth Circuit**

ROY VERNON SHAW,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Southern District of California
Northern Division.**

FILED

SEP 19 1958

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

J. B. TIETZ,
257 So. Spring Street,
Los Angeles 12, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;
ROBERT JOHN JANSON,
Asst. U. S. Attorney,
Chief Criminal Division;
THOMAS R. SHERIDAN,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

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United States District Court for the Southern
District of California, Northern Division

No. 3521

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY VERNON SHAW,

Defendant.

INDICTMENT

[U.S.C., Title 50, App., Sec. 562, Universal Military Training and Service Act.]

The grand jury charges:

Defendant Roy Vernon Shaw, a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said Act and the regulations promulgated thereunder and thereafter became a registrant of Local Board No. 79, said Board being then and there duly created and acting, under the Selective Service System established by said Act, in Bakersfield, Kern County, California; pursuant to said Act and the regulations promulgated thereunder the defendant was classified in Class 1-O and was notified of said classification; thereafter the defendant was ordered to report on September 24, 1957, to said Local Board No. 79 for instructions to proceed to the Los Angeles County Department of Charities in Los Angeles, California, for civilian work contributing to the maintenance of the na-

tional health, safety and interest; and, at [2*] said time, in Kern County, California, within the Northern Division of the Southern District of California, the defendant did knowingly fail and neglect to perform a duty required of him under said Act and the regulations promulgated thereunder in that he then and there knowingly failed and neglected to report for civilian work contributing to the maintenance of the national health, safety, and interest as so ordered to do.

A True Bill.

/s/ E. J. PRUD'HOMME,
Foreman.

/s/ LAUGHLIN E. WATERS,
United States Attorney.

[Endorsed]: Filed February 5, 1958. [3]

[Title of District Court and Cause.]

STIPULATION AND ORDER

(1. Trial Date—2. Jury Waiver)

The parties, by their counsel, hereby stipulate, subject to the approval of the Court, as follows:

1. Trial of the above cause shall be on April 25, 1958, at 2 p.m.;

2. Trial shall be by the Court, a jury being hereby waived, and this waiver shall be renewed in

*Page numbering appearing at foot of page of original Certified Transcript of Record.

open court, by the defendant and by his counsel, if the Court so requires.

Dated: March 21, 1958.

/s/ J. B. TIETZ,

Attorney for Defendant.

LAUGHLIN E. WATERS,

United States Attorney,

By /s/ THOMAS R. SHERIDAN,

Ass't. U. S. Attorney.

Order

So ordered.

Dated: March 28, 1958.

/s/ GILBERT H. JERTBERG,

U. S. District Judge.

[Endorsed]: Filed March 28, 1958. [4]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL

The defendant moves the Court for a judgment of acquittal for each and every one of the following reasons:

1. The Local Board denied defendant due process of law in that it never gave the required consideration (if any at all was given) to his claim and evidence for a IV-D classification.

2. Defendant was denied due process in that his classification was not reopened after he submitted the precise new and further evidence specifically requested of him by the local board, and further, he was thereby frustrated from securing an appellate determination on such augmented record.

3. The denial of the claim for exemption as a minister of religion by all of the draft boards, and each of them, is without basis in fact, arbitrary, capricious and contrary to law.

4. The denial of the ministerial classification is illegal, arbitrary and capricious because the draft boards employed artificial standards in determining what constitutes a minister of religion within the meaning of the Act and Regulations; and they did not follow the definition of the term used in the Act and Regulations in determining the claim of the defendant as a minister of religion. [5]

5. The denial of the ministerial classification by the draft boards was arbitrary and capricious in that they held that the performance of secular work by the defendant, alone, without determining whether it was his avocation and used his performance of secular work to defeat illegally his ministerial status because the undisputed evidence showed that he is not engaged in secular work as a main business but only incidentally to his main work of the ministry, and that, according to the Act and Regulations, he is regularly and customarily engaged in teaching and preaching the doctrines

and principles of a recognized church, and pursues such preaching work as his vocation, and does not preach incidentally to the performance of any secular work; and therefore the draft board order is illegal, contrary to law and without basis in fact.

6. Defendant was denied procedural due process in that the local board failed to have available an Adviser to Registrants and to have posted conspicuously or any place, the names and addresses of such adviser, as required by the Regulations, and to defendant's prejudice.

7. The plaintiff has wholly failed to show that jurisdiction existed in the Local Board 79 empowering it to issue to defendant a valid order to do civilian work.

8. Defendant requested a personal appearance before the Appeal Board but this was refused.

Respectfully submitted,

/s/ J. B. TIETZ,

Attorney for Defendant.

April 25, 1958.

[Endorsed]: Filed April 24, 1958. [6]

United States District Court for the Southern
District of California, Northern Division

No. 3521

UNITED STATES OF AMERICA,

vs.

ROY VERNON SHAW.

JUDGMENT AND COMMITMENT

On this 28th day of May, 1958, came the attorney for the government and the defendant appeared in person and with his attorney, J. B. Tietz.

It Is Adjudged that the defendant has been convicted upon Judgment of the Court of the offense of knowingly failing and neglecting to report for civilian work contributing to the maintenance of the national health, safety, and interest as so ordered to do, as charged in the Indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ninety (90) Days in a place of imprisonment selected by the Attorney General.

The defendant files a Notice of Appeal and an Appeal Bond in the amount of \$500.00, which the amount fixed by the Court.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ GILBERT H. JERTBERG,
United States District Judge.

[Endorsed]: Filed May 28, 1958. [7]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant, Roy Vernon Shaw, resides at 1544 West Morton Street, Porterville, California.

Appellant's attorney, J. B. Tietz, maintains his office at 410 Douglas Building, 257 South Spring Street, Los Angeles 12, California.

The offense was failing to report for civilian work, U.S.C., Title 50 App., Sec. 462—Universal Military Training and Service Act, 1951.

On May 28, 1958, after a verdict of Guilty, the Court sentenced the appellant to 90 days confinement in an institution to be selected by the Attorney General.

I, J. B. Tietz, appellant's attorney, being authorized by him to perfect an appeal, do hereby appeal

to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

/s/ J. B. TIETZ,
Attorney for Appellant.

[Endorsed]: Filed May 28, 1958. [8]

[Title of District Court and Cause.]

EXTENSION OF TIME

For good cause shown, defendant is hereby given 54 additional days, to and including September 1, 1958, to prepare and docket the record on appeal.

Dated: June 25, 1958.

/s/ LEON R. YANKWICH,
Judge.

[Endorsed]: Filed June 25, 1958. [12]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 12, inclusive, containing the original:

Indictment.

Stipulation (1) Trial Date, (2) Jury Waiver.

Motion for Judgment of Acquittal.

Judgment.

Notice of Appeal.

Designation of record.

Application for bail on appeal.

Extension of time to docket record on appeal.

B. Defendant's exhibit "A."

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Dated: August 6, 1958.

[Seal] JOHN A. CHILDRESS,
 Clerk,

By /s/ WM. A. WHITE,
 Deputy Clerk.

[Endorsed]: No. 16139. United States Court of Appeals for the Ninth Circuit. Roy Vernon Shaw, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed: August 7, 1958.

Docketed: August 16, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 16139

ROY VERNON SHAW,

Appellant.

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

Appellant will rely upon the following points in the prosecution of his appeal from the judgment entered in the above-entitled cause.

I.

The Local Board denied defendant due process of law in that it never gave the required consideration (if any at all was given) to his claim and evidence for a IV-D classification.

II.

Defendant was denied due process in that his classification was not reopened after he submitted the precise new and further evidence specifically requested of him by the Local Board, and further, he was thereby frustrated from securing an appellate determination on such augmented record.

III.

The denial of the claim for exemption as a minister of religion by all of the draft boards, and each of them, is without basis in fact, arbitrary, capricious and contrary to law.

IV.

Defendant requested a personal appearance before the Appeal Board but this was refused.

/s/ J. B. TIETZ.

[Endorsed]: Filed August 25, 1958.

